

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

HENRY J. KLEIN,

Plaintiff,

SECURA INSURANCE, A MUTUAL CO.,
A Domestic Corporation,

Involuntary Plaintiff,

Case No.

v.

MAXUM CASUALTY INSURANCE COMPANY,
A Foreign Corporation,
and TUXEDO DISTRIBUTORS, LLC,
A Foreign Corporation,

Defendants.

NOTICE OF REMOVAL

Defendants, Maxum Indemnity Company (incorrectly named as Maxum Casualty Insurance Company) and Tuxedo Distributors, LLC, by and through their counsel, hereby submit their Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, and in support of the removal of this action from the Circuit Court of Milwaukee County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin, state as follows:

1. This action was initiated by the plaintiff, Henry J. Klein, in the Circuit Court of Milwaukee County, Wisconsin, and is currently pending in said Court as Civil Action No. 2016-CV-009394.

2. This action was filed by the plaintiff on December 9, 2016. The defendants, Maxum Indemnity Company (incorrectly named as Maxum Casualty Insurance Company) and Tuxedo Distributors, LLC, admitted service of a copy of the Summons and Complaint on January 5, 2017. A copy of the Summons and Complaint and Admission of Service are attached to this Notice as Exhibits A and B.

3. Plaintiff also named as an involuntary plaintiff, Secura Insurance, A Mutual Co. Secura Insurance, A Mutual Co. is a nominal party with statutory subrogation interests. *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 369 (7th Cir. 1993). As a nominal party, Secura Insurance, A Mutual Co. is not a real party in interest and does not need to consent to the removal of this action. *Vandervest v. Wisconsin Cent. Ltd.*, 936 F. Supp. 601, 605 (E.D. Wis. 1996).

4. On December 9, 2016, the plaintiff, Henry J. Klein, filed a Jury Demand for a 12-person jury in the action. A copy of the Jury Demand is attached to this Notice as Exhibit C.

5. Defendants have not been served with any process, pleadings or orders in this action, and no other process, pleadings or orders have been filed in this action other than the documents attached hereto as Exhibits A through C.

6. This notice is timely filed pursuant to 28 U.S.C. § 1446(b)(3), in that thirty (30) days have not expired since January 5, 2017, the date on which the defendants, Maxum Indemnity Company (incorrectly named as Maxum Casualty

Insurance Company) and Tuxedo Distributors, LLC, admitted service of a copy of the Summons and Complaint.

7. The plaintiff, Henry J. Klein, is an adult citizen of Pewaukee, Wisconsin. The defendant, Maxum Indemnity Company (incorrectly named as Maxum Casualty Insurance Company), is a Delaware insurance corporation having its principal place of business in Alpharetta, Georgia. The defendant, Tuxedo Distributors, LLC, is a Massachusetts limited liability company having its principal place of business in Cleburne, Texas and having two individual members: Hugh S. Swink and Margaret C. Swink, both of whom are adult citizens of Bozeman, Montana.

8. Based upon the nature of the allegations in the Complaint, the matter in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs.

9. This court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between an individual, an insurance corporation, and a limited liability company with its individual members deemed citizens of different states.

WHEREFORE, defendants, Maxum Indemnity Company (incorrectly named as Maxum Casualty Insurance Company) and Tuxedo Distributors, LLC, respectfully request that this case be removed from the Milwaukee County Circuit

Court of Wisconsin to the United States District Court for the Eastern District of Wisconsin.

Dated: January 11, 2017.

s/Steven F. Stanaszak

Jay R. Starrett

State Bar No. 1011278

Steven F. Stanaszak

State Bar No. 1022255

Attorneys for Defendants, Maxum Indemnity Company (incorrectly named as Maxum Casualty Insurance Company) and Tuxedo Distributors, LLC

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